IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1175 OF 2005
IN
MENTAL HEALTH ACT PETITION NO.5 OF 2004

Shri Chandrakant Keshav Shende. ..Mentally Retarded.

V/s.

Jyoti Ravindra Budhkar. ..Petitioner.

Mr.D.M.Gokani for petitioner.

CORAM: A.M.KHANWILKAR,J

DATE : SEPTEMBER 14, 2005.

P.C. :

1. This Notice of Motion is taken out during the pendency of Mental Health Act Petition No.5 of 2004. The Mental Health Act Petition cannot be heard as issue regarding jurisdiction of this court has been referred to Larger Bench, which is pending consideration.

2. I am informed that in all there are 14 such matters pending in our High Court, which cannot be taken up for hearing. I am also informed that separate Bench has been constituted to hear the issue which has been referred to Larger Bench but the said Bench has recused itself from hearing the said matters. Now new Bench will have to be constituted.

3. Apprehension of the petitioner is that as there is uncertainty of final hearing on the issue and the matter is likely to remain pending in this court, the maintenance of Chandrakant Keshav Shende who is the uncle of the petitioner and acknowledged to be mentally retarded, will become difficult. This is so because the recurring amount which was received by the said Chandrakant Keshav Shende from Department of Post as pension amount cannot be accepted or received by him nor by the petitioner unless formal order in that behalf is passed. Correspondence is placed on record to indicate that the department of Post is inclined to hand over entire amount, which has become due and payable to Chandrakant Shende through the petitioner provided court order in that behalf is sought.

4. I am conscious of the fact that if relief in terms of prayer clause (a) is granted, that would amount to allowing the main petition, but in peculiar fact situation of the present case, I am disposed of to grant ad-interim relief as prayed in the present Notice of Motion on the assurance given by the petitioner that petitioner be permitted to accept amount by and on behalf of Chandrakant Shende from

Department of Post on clear understanding that the petitioner will bring back the said amount and if necessary with interest thereon, as may be determined by the court, if such occasion arises and order to that effect is passed by the court in the main Petition. It is stated that petitioner is gainfully employed and will be able to make good the amount, as and when required. The petitioner is willing to file such undertaking in this court.

5. Accordingly, Ad-interim relief in terms of prayer clause (a) and (b) is granted in the interest of Chandrakant Keshav Shende who is under care and in custody of the petitioner. Undertaking to be filed within one week from today.

6. It is once again made clear that this order is not an expression of opinion, with regard to the merits of the main matter, one way or the other.

7. Notice of motion be heard alongwith the main petition.